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USDOC FOR 1000/ITA/US/FLAVIN
USDOC FOR ITA DAS KASOFF
USDOC FOR 4420/ITA/MAC/OCM/MCQUEEN
USDOC FOR 3132/ITA/USFCS/OIO/EAP/RD/ZARIT/DESARRAN
USDOC FOR IMPORT ADMINISTRATION - LORENTZEN
TREASURY FOR SMITH/DOHNER/HAARSAGER/BAKER/CUSHMAN
STATE PASS USTR FOR STRATFORD/ALTBACH/WINTER/CELICO
NSC FOR JSHRIER/KTONG
TRANSPORTATION FOR OFFICE OF INTERNATIONAL AVIATION
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SUBJECT: U/S LAVIN, MOFCOM VM MA DISCUSS SED, JCCT, MARKET
ACCESS AND IPR, MARCH 28, 2007

¶1. (SBU) Commerce Under Secretary Lavin informed Ministry of Commerce (MOFCOM) Vice Minister Ma Xiuhong that unaddressed market access and IPR issues, the possibility of countervailing duty cases against China this year and the potential for a deterioration in the bilateral economic and trade relationship this year necessitate further bilateral work and corrective action by China to be able to generate positive momentum in that trade and economic relationship. U/S Lavin enumerated specific concerns regarding IPR protection, telecommunications services, movies, pharmaceuticals, civil aviation, securities, insurance and the automotive and steel sectors, and cautioned China that an expected March 30 decision in a countervailing duty (CVD) case may not be to China's liking nor the only such case this year. VM Ma emphasized the importance of the Strategic Economic Dialogue to promoting positive developments in the bilateral relationship and enumerated Chinese concerns about U.S. high-tech export controls, market economy status, and recent Congressional action aimed at making reviews of foreign investment in the United States stricter. VM Ma said China would use the six months following the upcoming CVD preliminary ruling to continue discussions with the United States. Both sides agreed to consider whether the Joint Commission on Commerce and Trade could be convened in Beijing in the first week of August and discussed a possible buying/investment mission and signing ceremony in conjunction with the May SED meeting. End summary.

Bilateral Trade, SED, JCCT and Chinese Issues

¶2. (SBU) Vice Minister Ma opened by saying the meeting should help preparations for the next Strategic Economic Dialogue (SED) and Joint Commission on Commerce and Trade (JCCT) meetings. The 2006 JCCT had properly handled a number of issues and laid a proper foundation for development of trade and economic relations later in the year. Joint efforts, including at the JCCT, had led to a 2006 year-on-year increase of U.S. exports to China of

nearly 33 percent. While Chinese investment in the United States remains limited, U.S. investment in China continued to grow in 2006, especially in services sectors. Even so, the trade imbalance grew, and increasing imports from the United States is a high priority for the Chinese Government in 2007. Proposed trade bills targeting China introduced in the U.S. Congress show a growth in U.S. trade protectionism. Both sides should seek mutual benefits, identify points where interests converge, and intensify cooperation.

¶3. (SBU) Ma asserted that due to the direct initiation and support by our heads of state, the December 2006 SED was successfully convened. The Chinese side attaches great importance to the SED, and the frequent exchanges of delegations in preparation for SED II in Washington shows that the United States does also. In preparing for SED II, China places emphasis on several issues.

Export Controls

¶4. (SBU) VM Ma said China has grave misgivings about the forthcoming export control regulation, even while recognizing that USDOC is revising that regulation based on recent bilateral consultations. High-tech trade has much room for further progress. U/S Lavin noted Commerce A/S Padilla's January visit to China for high-tech discussions and China's own comments about the draft regulation. Many of China's views have been incorporated in the revised draft. Only a small percentage of U.S. exports to China are subject to export controls and the United States is pleased to continue discussions on the topic and to improve further its procedures. The United States considers the

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new export controls to be a case of a successful transition.

A/D and CVD

¶5. (SBU) China has been closely following U.S. anti-dumping and now CVD investigations of Chinese products. China asks that its previously expressed views will be given full consideration, VM Ma said. U/S Lavin noted that a preliminary ruling in the current CVD investigation will likely be issued on March 30, and while he could not say what the ruling will be, China should anticipate the possibility that the ruling will not be positive in China's view. More CVD cases could well follow later in the year. Nothing is inherently unfair about recourse to CVD cases and such action is permitted to the United States as a WTO member. China should move away from subsidies if it wishes to avoid CVD cases. Both sides should consider how this could affect trade relations this year, and China should address outstanding trade problems as part of the response to managing trade issues this year. VM Ma expressed great regret that the decision might not be positive. Use of anti-dumping and CVD cases, not granting market economy status to China after nearly 30 years of economic reform, and use of third-country pricing data -- these strike China as unfair and as discriminatory, violating the fundamental WTO principle of non-discrimination. One can only expect a negative impact on bilateral trade from such a ruling. In response to U/S Lavin's observation that numerous Chinese officials and press accounts discuss subsidies available to Chinese companies and therefore recourse to CVD cases should not be a surprise, VM Ma asserted that China does not use any WTO-prohibited subsidies. In any event, China stands ready to continue communications on this matter in the six-month period following issuance of the preliminary ruling.

Investment in the United States

¶6. (SBU) Legislation in the U.S. House of Representatives to make reviews of foreign investments in the United States stricter is worrisome and may have a negative impact on the interest of Chinese firms to invest in the United States. However, China has noted with interest USDOC's announcement of a new initiative to attract inward investment. China seeks a fair and transparent investment environment for its companies and looks to expand the new area of two-way investment. U/S Lavin responded that while China is not a specific target of the inward investment initiative, China could be a major beneficiary of it. The United States welcomes foreign investment. Investment decisions should be made for business reasons, not political reasons. He urged that any news of possible investment announcements to be made by Chinese companies in the run-up to the May SED meeting be passed to the U.S. side as early and fully as possible.

Market economy status for China

¶7. VM Ma expressed hope that through concerted efforts substantial progress might yet be achieved on China's goal of receiving market economy status from the United States. She acknowledged that real progress on this issue requires time. In wrapping up her presentation of issues of concern to China, she noted that new issues will emerge with time, so bilateral trade consultations will never cease -- but the bilateral relationship is a long-time thing in itself.

Potential for Deterioration If Issues Not Addressed

¶8. (SBU) U/S Lavin prefaced his enumeration of specific

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concerns with a candid brief regarding why bilateral economic relations face the prospect of deterioration this year. The trade imbalance continues to grow amidst a general perception of unfair trade practices in China, and U.S. market access issues raised for two years have not been addressed; and despite many Chinese Government initiatives on IPR protection, the general perception remains that severe IPR problems persist in China. A political shift in Washington away from trade liberalization and more towards trade nationalism with the aforementioned factors contribute to a more negative atmosphere this year. He then enumerated several representative areas of no progress or severe market restrictions even after two years of raising these issues.

U.S. Concerns Largely Unaddressed

Telecoms

¶9. (SBU) China is one of the world's largest markets for providers of telecommunications services, but U.S. telecom firms can't compete in China after two years of raising market access issues. VM Ma noted that at the 2006 JCCT, China had agreed to lower the market access threshold (capitalization requirement), and that exchanges with U.S. officials and with Chinese officials show progress is on the way. U/S Lavin repeated that nothing has changed yet for U.S. telecom providers.

Pharmaceuticals

¶10. (SBU) The United States has sought IPR protection for active pharmaceutical ingredients (API) for two years, but nothing has changed in this period. The 2006 JCCT had instructed the relevant working group to study the issue, VM Ma replied.

Movies

11. (SBU) The U.S. movie industry is almost completely closed out of the Chinese market, with no change in market access conditions over the last two years. VM Ma's replies did not address this point.

Civil Aviation

12. (SBU) China remains a highly or severely restricted market, U.S. airlines cannot compete in China as they hope to. U/S Lavin acknowledged VM Ma's point that the 2004 Civil Aviation Agreement had increased frequencies for transpacific flights, but strongly emphasized that demand for more flights exceeds the increased limit, thus the market remains severely restricted. VM Ma noted current bilateral civil aviation negotiations related to the SED. She added that Chinese airlines have been only able to use some of their increased frequencies, while airlines from the world's largest developed country already were making full use of their allotted frequencies. She noted that the airlines of the two countries have considerably different levels of competitiveness but policy elements such as the difficulties for Chinese citizens to get U.S. visas and the absence of Approved Destination Status for the United States making Chinese tour group travel to the United States difficult under Chinese regulations also impact the civil aviation situation. In implementation of the 2004 civil aviation agreement, the Chinese side has not entered as fully into the U.S. market as the U.S. side has entered into the Chinese market. Nonetheless, further progress in two-way civil aviation liberalization can be realized.

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Securities and Insurance

13. (SBU) U.S. firms are largely barred from operating in the securities sector in China. U.S. insurance companies are unable to obtain local licenses in China. VM Ma replied that the Ministry of Finance, the U.S. Treasury Department and other relevant agencies are discussing these issues and reports reaching the Vice Minister, including some from U.S. sources, indicate certain progress.

Automotive and Steel Sectors

14. (SBU) U/S Lavin briefly noted U.S. concerns about these sectors, including that U.S. automotive companies cannot wholly own auto manufacturers in China. VM Ma's considerably longer reply dwelt on foreign-invested auto firms' market shares in China and foreign automaker CEOs' statements of satisfaction about business in China.

IPR

15. (SBU) In response to U/S Lavin's statement about severe IPR problems still extant in China, VM Ma noted that she and U/S Lavin had already had an exchange of views on the topic at that day's luncheon. She further remarked that at the 2006 JCCT meeting, both sides had discussed IPR concerns and developments. While the two sides' statements may have differed in substance, they were useful to illuminate perspectives and to inform subsequent intensification of efforts in this area.

16. (SBU) In wrapping up the issues discussion, U/S Lavin reiterated the potential for negative developments in the trade and economic relation if China does not take action on market access and IPR issues. VM Ma urged that both sides strengthen cooperation on trade and economic issues

and address concerns in accordance with the five principles outlined by Premier Wen Jiabao when he met with President Bush in Washington in December 2003. Politicization of trade and economic issues will be detrimental to the overall relationship. MOFCOM looks forward to maintaining its good existing relationship with USDOC and to making progress on issues of concern to both sides.

JCCT Timing

¶17. (SBU) U/S Lavin suggested consideration of the first week of August 2007 for the next meeting of the JCCT, to be held in Beijing. It was agreed that MOFCOM Americas Director-General He Ning and Commerce DAS Ira Kasoff will hold expert discussions to ascertain the feasibility of that date.

SED Buying Mission - and Chinese Investments?

¶18. (SBU) U/S Lavin recalled earlier comments about a possible Chinese mission to purchase U.S. goods at the time of the May SED meeting. He urged fullest and soonest news of details, so that visa facilitation and stateside support could be arranged, and urged China to consider what contract signings might be part of an event at the Commerce Department. VM Ma said indeed MOFCOM is working with Chinese Chambers of Commerce to plan a buying mission, with MOFCOM a necessary player in order to facilitate visa issuance by the U.S. Embassy. Particular contract signings will be determined by the participating companies themselves. Information will be conveyed to USDOC as available. There may also be some investment signings.

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China hopes to move forward the two wheels of trade and investment at the same time. U/S Lavin welcomed news of the buying mission and further recommended that MOFCOM also pass along news of planned investment signings as available. DAS Kasoff and DG He Ning will discuss further the issue of a signing ceremony.

Meeting Participants

¶19. (U) United States Participants:

USDOC International Trade Administration Under Secretary
Frank Lavin
Commerce Deputy Assistant Secretary for Asia Ira Kasoff
Embassy Minister-Counselor for Economic Affairs Robert Luke
Embassy Acting Minister-Counselor for Commercial Affairs
William Brekke
Embassy Special Counsel to the Secretary of Commerce
Caroline Katzin
Embassy Trade Facilitation Office Director Ira Belkin
Embassy Economic Section Deputy Chief Christopher Beede
(notetaker)
Embassy Commercial Officer and First Secretary David
Gossack
USDOC Office of the Chinese Economic Area International
Trade Specialist Ellen Szymanski
Embassy Commercial Specialist Hu Bin
Interpreter

¶20. (U) Chinese Participants (all Ministry of Commerce except for Ma Enzhong):

Vice Minister Ma Xiuhong
Director-General of the Treaty and Laws Bureau Shang Ming
Director-General of the Fair Trade Bureau Li Ling
Director-General for American and Oceanian Affairs He Ning
Deputy Director-General of the WTO Affairs Department Chai
Xiaolin
Deputy Director-General of the Fair Trade Bureau Liang

Shuhe
Deputy Director-General of the Department of Industry Zhou
Ruojun
Deputy Director-General of the Department for Cooperation
with Foreign Countries Chen Lin
State Intellectual Property Protection Office Deputy
Secretary-General Ma Enzhong

SIPDIS
Foreign Affairs Department Director Yuan Yuan (interpreter)

121. U) This report has been cleared by U/S Lavin.

RANDT